

Frasure, Lauren

From: Frasure, Lauren
Sent: Thursday, September 5, 2019 12:32 PM
To: Edwards, William Eric
Attachments: Exempt.pdf

MEMORANDUM

TO: The Honorable Aramis Ayala, State Attorney

FROM: Monique Haughton Worrell, Director of Conviction Integrity Unit.
Randy E. Loboda, Legal Intern

DATE: April 10, 2019

REFERENCE: Request for Further DNA Testing of Case Evidence Using Superior, More Recently Available Technologies in State v. William Thomas Zeigler, Jr.

- #1.) What was reviewed prior to writing this?
#2.) Have the Attorneys been provided this?
#3.) Has AA been shown this document?

STATEMENT OF FACTS

- #4.) Are we going to notify victim's families IF testing is to move forward?

On December 24, 1975, four individuals were discovered deceased inside the Zeigler

Furniture Store, located in Winter Garden, Florida. The subsequent investigation into the deceased individuals revealed their deaths to be the result of homicidal violence. Authorities were alerted to the homicides by Mr. William Thomas (Tommy) Zeigler, who called authorities to the location. Upon the arrival of authorities, Mr. Zeigler was discovered inside the store suffering from a gunshot wound to the abdomen and relayed that unknown individuals had shot him when he entered the store around 9:20 p.m. The investigation revealed that the deceased individuals inside the store had been killed prior to Mr. Zeigler's arrival at the business. Mr. Zeigler could provide little information regarding the incident or the individuals involved.

Inside the store, authorities discovered the following individuals:

Ms. Eunice Zeigler - Tommy Zeigler's wife.

EE Read 7/30/2019
EE Re-read 8/1/2019
EE discussed with AA on 7/31/2019
AA advised she read this and discussed with MW.
OVER

#5.) What is SAO's PIO Statement?

What two led to this 4/11?

→ 9/5/2019 AB called regarding meeting, the date of or meeting with AA - (SAO's) has received a PRR from Tampa News Paper

#6.) Are we notifying Victim Families before a PRR Statement goes out?

— I suggested/purported AA to re-read the document as it she was a member of Z's defense Team.

— Discussed with DB.

— AA told Amank to conduct her own review and response to this document on 7/31/2019 EE 10-12 for this conversation

- Mr. Perry Edwards - Tommy Zeigler's father-in-law.
- Mr. Virginia Edwards - Tommy Zeigler's mother-in-law.
- Mr. Charles Mays - A customer of Zeigler's Furniture Store.

The initial investigation revealed that all four victims had been shot. Additionally, Mr. Edwards and Mr. Mays suffered blunt force trauma to the body. Evidence indicated that Mr. Edwards and Mr. Mays had been involved in physical confrontations with their assailant(s).

The initial investigation further revealed that Ms. Zeigler, Mr. Edwards, and Ms. Edwards had been killed prior to the death of Mr. Mays. A clock inside the business where the body of Ms. Zeigler was discovered had been struck by a bullet, stopping the clock at 7:24 p.m. The examination of the crime scene indicated that Mr. Mays was killed sometime after the murders of Ms. Zeigler, Mr. Edwards, and Ms. Edwards.

Mr. Zeigler, who had been transported to the hospital for treatment of his injury sustained on the night of December 24, 1975. He immediately invoked his right to remain silent and was presented by legal counsel. Mr. Zeigler was arrested several days later and charged with all four murders.

In 1976, Mr. Zeigler was tried for the murders of his wife, his in-laws, and Mr. Mays, with the trial begun held in Jacksonville, Florida, as a result of a change-in-venue being granted. On July 2, 1976, Mr. Zeigler was found guilty of all four murders. A jury sentenced Mr. Zeigler to four counts of life imprisonment, with the sentences to run consecutively. The presiding judge, Judge Paul, overrode the jury's punishment and sentenced Mr. Zeigler to death.

How do we
know this?

Mr. Zeigler has filed numerous appeals to the Florida Court of Appeals, the Florida Supreme Court, and the United States Supreme Court. As of the date of this memo, Mr. Zeigler's death sentence has been upheld.

ISSUE

Whether the 9th Judicial Circuit State Attorney's Office should join William Thomas (Tommy) Zeigler's Defense Team in supporting a joint request for further DNA testing of case evidence using superior, more recently available technologies?

BRIEF ANSWER

Yes. DNA was first discovered around 1880, however, DNA was not used in criminal cases until approximately 1988. Since that time, the ability to collect, breakdown, and identify sources of DNA collected in references to criminal investigations has increased dramatically. Similarly, with the advances in DNA technology, the ability to identify those involved in criminal activity, as well as exonerate those falsely accused and convicted has also dramatically increased.

As of the date of this memorandum, there have currently been 2,413 exonerations of those falsely convicted, totaling more than 21,095 years lost.¹ Included in this total is the exoneration of Frank Lee Smith, a Florida resident, who was convicted of rape on April 15, 1985. Mr. Smith, who maintained his innocence since his conviction, died in prison as a result of cancer on January 30, 2000. Fourteen years after his death, DNA testing proved that Mr. Smith was innocent of the crime he was incarcerated for. On December 15, 2000, eleven months after his

¹ The National Registry of Exonerations. (Summary courtesy of the Innocence Project, <http://www.innocenceproject.org>).

death, and fourteen years after his conviction. Mr. Smith was exonerated as the result of exculpatory DNA testing.²

On March 28, 2019, The Florida Times-Union, reported the exoneration of Mr. Clifford Williams, Jr., who spent Forty-two years on Death Row in Florida, having been falsely convicted of a murder in Duvall County, in 1973. Like the Zeigler case, Mr. Williams, Jr., had maintained his innocence. The article relates that Twenty-nine wrongfully convicted death-row inmates have been exonerated in Florida, the most in the nation.³ There can be no arguing that the death penalty is the ultimate punishment that can be assessed in an American courtroom. The execution of an innocent defendant can't be reversed. Life taken away can't be returned. It is incumbent on the courts to ensure that a death penalty conviction can withstand the test of time and judicial review. While Tommy Zeigler rests his death penalty conviction on DNA examination, Mr. Zeigler's conviction begins with issues of judicial failures. ?

A. Overview of Postconviction DNA Testing

Advances in the technology involving DNA analysis has increased dramatically since the 1970's. There can be no dispute that the DNA testing available to Mr. Zeigler today is far more advanced than the testing offered in 1975, or the retesting that occurred in 2011. As advances in DNA testing continues, so does the ability of prosecutors and defense counsels to ensure that the correct defendants are convicted, and the innocent defendants go free. The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice website provided the following:

"Additionally, newer technologies have substantially increased the successful DNA analysis of aged, degraded, limited, or otherwise compromised biological Evidence. As a result, crime scene samples once thought to be unsuitable for testing in the past may now yield DNA profiles. Moreover, samples that previously generated

² Id.

³ The Florida Times-Union, March 28, 2019.

inconclusive DNA results may now be amenable to reanalysis using newer methods.”⁴

On March 4, 2019, at approximately 2:00 p.m., a meeting was held at the request of Tommy Zeigler’s previous and current attorneys. Present during the meeting were:

Mr. Ralph Hadley III	-	Tommy Zeigler’s Original Attorney.
Mr. Dennis Tracey III	-	Tommy Zeigler’s Current Pro Bono Attorney.
Mr. David Michceli	-	Tommy Zeigler’s Current Pro Bono Attorney.
Ms. Monique Houghton Worrell	-	ASA, Conviction Integrity Unit.
Ms. DeShaundra Fleming	-	Paralegal, Conviction Integrity Unit.
Ms. Dana Alberga	-	FAMU Intern
Mr. Randy E. Loboda	-	FAMU Intern

Mr. Zeigler’s defense team is requesting additional DNA testing be done with focus on

Backspatter and **Touch DNA**. Backspatter involves the mist-like dispersion of tiny blood droplets created when a bullet impacts a body. Experiments have shown that this mist can travel up to 4 feet, from both entrance and exit wounds, which require a magnifying device to observe.

⁵ It is only with the advances in DNA testing that backspatter has become important in any evidentiary value. The defense contends that if Mr. Zeigler is responsible for the crimes he has been convicted of, Mr. Zeigler’s clothing will contain evidence of backspatter.

Mr. Zeigler’s Defense Team is also requesting that evidence from the Zeigler crime scene be submitted for **Touch DNA**. Touch DNA refers to DNA contained in **epithelial**, or **skin cells**.

These cells are transferred when a person’s skin come into contact with an object and pressure and friction are applied. Importantly, skin cells are also transferred through sweat because

epithelial cells are present in sweat gland.⁶ The memorandum filed by Tommy Zeigler’s defense

⁴ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice – NIJ.gov. Dated March 8, 2018.

⁵ See generally, *Interpretation of Bloodstain Evidence at Crime Scenes, Second Edition*, Stuart James and William Eckhart, CRC Press 1998.

⁶ See *State v. William Thomas Zeigler, Jr., Memorandum Inviting The State’s Attorney To Jointly Request Further DNA Testing Of Case Evidence Using Superior, More Recently Available Technologies*.

team notes that in November 2013, the St. Petersburg police department reported that they began testing Touch DNA since August 2010, which has helped them solve 38 percent of their burglary cases.⁷ There can be little argument that if Touch DNA has proved its value in burglary cases, it would be equally valuable in homicide cases where the death penalty is the ultimate punishment.

Additionally, the defense team pointed out that the fingernail clippings of Mr. Perry Edwards were never submitted for DNA evidence. Evidence indicates that Mr. Edwards was involved in a physical fight with his assailant(s) prior to his death. The failure to examine Mr. Edwards' fingernails for any physical evidence left during the struggle could result in exculpatory evidence being overlooked.

Do we know this to be the case?
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Are these items still available?

Finally, the Defense Team is offering to pay for any and all additional DNA testing associated with their request regarding examination of any evidence for backscatter or Touch DNA. With the financial burden of additional DNA testing being lifted from the State, there should be no reason to object to the testing based on financial reasons.

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B. Additional Factors

I. Judicial Conflict.

Months before the murders in Winter Garden, Tommy Zeigler, and Judge Paul, (who would preside over the Zeigler trial), testified on opposing sides in liquor license revocation case involving one of Tommy Zeigler's friends. Mr. Zeigler's friend won the case and could keep his business and liquor license. Judge Paul was on the losing side of the hearing. At the time of Mr. Zeigler's trial, the defense requested that Judge Paul recuse himself, which Judge Paul refused to do.

How do we know this?
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⁷ Id.

Additionally, it was discovered that the trial judge had contacted a doctor, who prescribed valium for a juror that was having a difficult time during jury deliberations.

II. Sentencing.

Having been found guilty by a jury of his peers, Mr. Zeigler was sentenced to "life in prison." Judge Paul, who had refused to recuse himself, overrode the jury's sentence and sentenced Mr. Zeigler to the Death Penalty. This judicial override is no longer allowed. On March 7, 2016, Florida Governor Rick Scott signed into law a bill that changed Florida's death sentencing scheme. The Florida State Statute §931.141(3)(a), The Imposition of Sentence of Life Imprisonment or Death, now reads that if a jury recommends life imprisonment without the possibility of parole, the court shall impose the recommended sentence. This change in the Florida Statute was in response to a United States Supreme Court ruling in Hurst v. Florida, which ruled that a defendant is entitled to sentencing by an impartial jury, under the Sixth and Eight Amendments of the United States Constitution. Hurst v. Florida, 136 S.Ct. 616 (2016).

The issue of whether the Hurst decision should be applied retroactively was addressed by the Florida Supreme Court in Mosley v. State, 209 So. 3d 1248 (Fla. 2016). In Mosley, the defendant was convicted of two first-degree murders, and sentenced to death by a non-unanimous death recommendation by a jury. Id. Having been sentenced to death, the defendant sought to overturn his sentence based on the Hurst opinion. Id. at 1254. The Florida Supreme Court, after reviewing the Supreme Court ruling in Mosley, determined that, "Considerations of fairness and uniformity make it very difficult to justify depriving a person of his liberty of his life, under process no longer considering acceptable and no longer applied to distinguishes cases." Id. at 1284. The Florida Supreme Court has previously held that fundamental fairness alone may require the retroactive application of certain decisions. Id. at 1274. The Court

*How do we know this?

*What was the outcome of this topic?

How do we know this?



emphasized that their ruling under Mosley, would "only impact the sentence of death, not the conviction." Id. at 1283. The Florida Supreme Court, realizing that the Florida Statutes regarding the death sentence, violated an individual's rights guaranteed under the United States Constitution, determined that Hurst should be applied retroactively. Id. The judicial override of Mr. Zeigler's life sentence from a jury to a death sentence from the jury to a death sentence from the trial judge amounts to a violation of Mr. Zeigler's constitution rights, affording him a resentencing under Mosley. A review of LexisNexis reveals that Mosley has been cited in over 102 decisions with no negative connotations.

III. Due Process Violations.

Detectives responded to the original crime scene and early into the investigation, developed a theory that Mr. Zeigler was involved in the murders on the individuals discovered in the Zeigler's Furniture Store business. Mr. Zeigler had been transported to a nearby hospital for treatment of the gunshot wound he allegedly sustained upon his arrival at the business that evening. Detectives responded to the hospital to obtain a "Consent to Search" from Mr. Zeigler while he was being treated in ICU. When detectives weren't admitted into Mr. Zeigler's treatment room, detectives got a nurse to go inside and obtain consent to search from Mr. Zeigler. It's unknown if Mr. Zeigler was advised of his right to refuse consent, or of his right to terminate the search at any time.

While at the hospital, detectives confiscated Mr. Zeigler's clothing from emergency room personnel. While this may not be a problem if police considered Mr. Zeigler a "victim," however, if police considered Mr. Zeigler a "suspect" an evidentiary search warrant would have been required to take Mr. Zeigler's clothing.

IV. Witness Credibility

During trial, the prosecution presented testimony of Dr. Herbert Leon MacDonnell, a professor at Elmira College, Corning, New York, acknowledged by the courts as a "blood spatter" expert. In 2012, Dr. MacDonnell was convicted of obtaining "inappropriate pictures of an 11-year-old female. During the subsequent investigation, Dr. MacDonnell disseminated false forensic information against the victim, resulting in the loss of his ability to testify in any trial, and the questioning of his previous courtroom testimony.

Anyone reviewing the facts would conclude that Mr. Zeigler received less than a fair trial.

C. Legality v. Morality

Mr. Zeigler has been afforded both effective legal counsel, as well as access to the courts. Mr. Zeigler's appeals have been reviewed by the State of Florida Court of Appeals and the Florida Supreme Court. Mr. Zeigler's conviction has been also addressed by the U. S. Supreme Court in 1981. (See Zeigler v. State, 402 So.2d 365). Additional DNA testing was requested and granted in 2002, without identifying any unidentified suspect(s).⁸ After reviewing the case it is apparent that Mr. Zeigler received a less than fair trial. The Defense is now requesting additional DNA testing based on advances in DNA technology. While approval by the State authorizing additional DNA testing may not be required by law, the bigger issue is whether it is the moral thing to do.

The basis of the American Judicial System is founded under the tenets of "Good Faith." Can the State of Florida legally decline to support additional DNA testing? Absolutely. Can the State of Florida morally justify a decline to support additional DNA testing? Absolutely Not. If additional DNA testing can provide closure of issues related to Mr. Zeigler's conviction, the State has a moral obligation to embrace the opportunity to show that "they did it right." The

⁸ LapCorp Certificate of Analysis. Dated June 20, 2012.

State, while bearing no financial responsibility for the additional DNA testing can and should request that any DNA testing be conducted by a laboratory authorized to enter results into CODIS, and that fingernail clippings of Mr. Mays and Mr. Edwards be examined and analyzed.

The conviction of Mr. Zeigler is not based solely on the basis of DNA evidence, but also on the testimony of witnesses that testified to the events surrounding the murder of the four victims inside Zeigler's Furniture Store. If DNA evidence can provide any additional information regarding any additional suspect(s) in this matter, the DNA testing should be allowed.

CONCLUSION

The State of Florida has the most death row exonerations of any state in the country. Mr. Zeigler is currently on death row with no current scheduled execution date. Additional DNA testing will not prevent the State of Florida from administering justice, but it could, very well, prevent the State of Florida from carrying out a miscarriage of justice.

The Supreme Court ruled in Hurst v. State, that when a judge overrides a jury's life sentence and imposes the death penalty it amounts to a violation of an individual's Constitution rights under the Sixth and Eight Amendments. Based on the Court's opinion, Florida's Governor Scott immediately amended the Florida Statute regarding judicial overrides of death sentences. The Florida Supreme Court also recognized that this denial of an individual's basic rights is so important that they agreed that the Hurst decision should be applied, retroactively, in their decision under Mosley v. State.

Mr. Zeigler's Defense should be allowed to conduct additional DNA testing utilizing the more advanced technology that is now available, and Mr. Zeigler's original life in prison sentence decided on by a jury of his peers should be restored.